

BEFORE THE STATE OF SOUTH CAROLINA
DEPARTMENT OF INSURANCE

In the Matter of:)	
)	
The Proposed Acquisition of Direct)	
General Insurance Company and)	DECISION AND ORDER
Direct General Life Insurance Company, South)	
Carolina Domestic Insurers and Ultimately)	Docket No. 2007-01
Wholly Owned Subsidiaries of Direct General)	
Corporation, a Tennessee corporation,)	
By Elara Holdings, Inc., a Delaware)	
Corporation)	
_____)	

This matter comes before me pursuant to the Form “A” Statements regarding the Acquisition of Control of or Merger with a Domestic Insurer (“the Form A”) filed by Elara Holdings, Inc. and Elara Merger Corporation (the “Applicants”), in accordance with South Carolina’s Insurance Holding Company Regulatory Act. *See* S.C. Code Ann. §§ 38-21-60 & 38-21-70 and 25A S.C. Code Ann. Regs. 69-14. South Carolina law requires the approval of the Director of Insurance or his designee, after a public hearing, of any merger or acquisition of control of a South Carolina domestic insurer unless after a public hearing he finds that one or more of the conditions enumerated in S.C. Code Ann. § 38-21-90 exist.

A hearing was held on March 15, 2007, before Deputy Director Charles W. Perry, hearing officer for the South Carolina Department of Insurance, as appointed by Director Scott H. Richardson. The Department was represented by Jeffrey A. Jacobs, Chief Legal Counsel. The Applicants were represented by Young Clement Rivers, LLP through Michael A. Molony, and Morris, Manning and Martin, LLP through Thomas A. Player, Jr.

STATEMENT OF THE CASE

The Form A provided notice of the Applicants' intent to acquire control of Direct General Insurance Company ("Direct General Insurance") and Direct General Life Insurance Company ("Direct General Life"), both South Carolina domestic insurers. The Applicants propose to acquire all of the issued and outstanding shares of capital stock of Direct General Corporation ("Direct General"), the parent of Direct General Insurance,¹ for approximately \$433.6 million.

STATUTORY STANDARD OF REVIEW

S.C. Code Ann. § 38-21-10(2) of the South Carolina Code of Laws creates a presumption of control whenever an acquiring entity would directly or indirectly own ten percent or more of the voting securities of a regulated entity. S.C. Code Ann. § 38-21-60 prohibits any person from acquiring control of a domestic insurer without first having filed information required pursuant to the Insurance Holding Company Regulatory Act and having obtained approval for that acquisition from the Director of Insurance or his designee under S.C. Code Ann. § 38-21-90.

S.C. Code Ann. § 38-21-90 of the Insurance Holding Regulatory Company Act specifically requires the approval of the proposed acquisition of control of a South Carolina domestic insurer unless the Director of Insurance or his designee determines, after a public hearing, that:

- (1) After the change of control the domestic insurer is not able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed.

¹ Direct General Life Insurance Company is a wholly owned subsidiary of Direct General Insurance Company.

(2) The effect of the merger or other acquisition of control would substantially lessen competition in insurance in this State or tend to create a monopoly. In applying the competitive standard in this item:

(a) The information requirements and standards of Section 38-21-125(C) and (D) apply.

(b) The merger or other acquisition must not be approved if the Director or his designee finds that at least one of the situations in Section 38-21-125(D) exists.

(c) The Director or his designee may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time.

(3) The financial condition of the acquiring party might jeopardize the financial stability of the insurer or prejudice the interest of its policyholders.

(4) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets, or consolidate or merge it with a person or to make another material change in its business or corporate structure or management are unfair and unreasonable to the policyholders of the insurer and not in the public interest.

(5) The competence, experience, and integrity of those persons who would control the operation of the insurer are such that it is not in

the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control.

- (6) The acquisition is likely to be hazardous or prejudicial to the insurance-buying public.

Therefore, the Applicants must prove by a preponderance of the evidence that those factors do not exist.

FINDINGS OF FACT

Having considered the Form A applications, the testimony of Dan Tarantin, J. Todd Hagely, and Linda Haralson, and all other materials constituting the record in this matter, I find, by a preponderance of the evidence, the following as to the requested approval of the acquisition of Direct General and Direct General Life:

1. Form A applications were filed with the Department on or about December 28, 2006. The applications comply with the requirements of S.C. Code Ann. § 38-21-70.

2. Notice of the required hearing was given within the time and in the manner required by law or was waived, and the Department and the Applicants consented to the holding of the Hearing on March 15, 2007 at 10:00AM EDT.

3. Direct General Insurance is a South Carolina domestic insurer wholly owned by Direct General Corporation, a Tennessee corporation. Direct General Life is a South Carolina domestic insurer wholly owned by Direct General Insurance.

4. The Applicants were organized in 2006 for the purpose of acquiring all of the capital stock of Direct General and acting as a holding company for Direct General, direct parent of Direct General Insurance. Upon consummation of the merger, Elara

Merger Corporation will merge into Direct General and cease to exist. Post-closing, the ultimate parent of Elara Holdings, Inc. will be Calera Capital Investors III, L.L.C. and TPG Advisors V, Inc.

5. The Applicants propose to acquire, directly or indirectly, all of the issued and outstanding stock of Direct General for an aggregate purchase price of approximately \$ 433.6 million cash. This represents the total consideration to be paid by the Applicant pursuant to the terms of the purchase agreement. The boards of directors of all interested entities have approved the transaction. Direct General Insurance and Direct General Life will continue their operations in South Carolina.

6. Based upon the materials submitted by the Applicants and the other evidence adduced at the hearing, none of the conditions provided for under S.C. Code Ann. § 38-21-90(A) exist or apply with respect to the proposed acquisition.

7. The Applicants represented that Direct General Insurance and Direct General Life would continue to comply with all requirements for licensure.

8. The Applicants have no present plans to liquidate Direct General Insurance or Direct General Life or to sell their assets to any person. The Applicants do not have any plans to cause Direct General Insurance or Direct General Life to merge or consolidate or transfer any of their assets with any other company. The officers and directors of Direct General Insurance will be Daniel Tarantin, CEO; Tammy Adair, President; J. Todd Hagely, Executive Vice President and CFO; Steven Harms, Vice President Finance and Treasurer; Scott Johnson, Senior Vice President Claims; and Scott Bojczuk, Executive Vice President, General Counsel, and Secretary. Ms. Adair and Messrs. Hagely, Harms, and Johnson are current officers of Direct General Insurance.

These persons are also the officers and directors of Direct General Life, and, in addition, Brian Hanrahan will be the Vice President of Direct General Life's Actuarial Group. Direct General Insurance and Direct General Life will maintain their corporate identities and will operate as South Carolina domestic insurers.

9. The Applicants are financially sound. Consummation of the Agreement will not reduce the security of, or the service to be rendered to, any policyholders of the Company, nor will the financial condition of the Applicants jeopardize the financial stability of the Company or prejudice the interests of its policyholders or the interests of any remaining security holders who are unaffiliated with the Applicants. The Applicants have no plans to declare any extraordinary dividends for either Direct General Insurance or Direct General Life.

10. The biographical affidavits provided for the executive officers and directors of the Applicant were included in the Form A. That information and the testimony of Messrs. Tarantin and Hagely indicate that the Applicants' proposed management team has management experience and further indicates that those individuals do not have a history of criminal convictions.

CONCLUSIONS OF LAW

I have considered the statutory requirements for approval of a change of control in accordance with the applicable provisions of the South Carolina Code and make the following conclusions of law:

1. I have jurisdiction over the parties and the subject matter pursuant to the provisions of S.C. Code Ann. §§ 38-21-60, 38-21-70, 25A S.C. Code Ann. Regs. 69-31 and other pertinent provisions of the South Carolina Insurance Code.

2. Upon completion of the proposed acquisition, Direct General Insurance and Direct General Life will continue to be able to satisfy the requirements for the issuance of a license as required by § 38-21-90 (A)(1).

3. This acquisition will not substantially lessen competition or create a monopoly, which is prohibited by § 38-21-90 (A)(2).

4. The Applicants' financial condition will not jeopardize the financial stability of Direct General Insurance or Direct General Life or prejudice the interest of their policyholders, pursuant to the provisions of § 38-21-90 (A)(3).

5. The transaction is neither unreasonable for policyholders nor contrary to the public interest, pursuant to the provisions of § 38-21-90(A)(4).

6. The Applicants will bring some experience and expertise to the transaction. It also appears that the conditions of § 38-21-90(A)(5) will not occur because the experience and integrity of the persons who would control the operation of Direct General Insurance and Direct General Life are such that it would be in the interest of the policyholders of Direct General Insurance and Direct General Life and the public to permit the acquisition.

7. The proposed acquisition is not likely to be hazardous to those buying insurance as prohibited by § 38-21-90(A)(6). Any existing certificates of coverage will continue in force and effect.

CONCLUSION

In view of the foregoing findings of fact and conclusions of law, the criteria established under S.C. Code Ann. § 38-21-90 for approval of an acquisition of control or merger of a domestic insurer have been met. Accordingly, it is ordered that the Form A

applications to acquire direct control of Direct General Insurance and Direct General Life are APPROVED subject to the following conditions. The Applicants must:

1. Secure the approval of any other regulatory entities by making any required state and federal filings; and
2. Comply with all applicable provisions of South Carolina law to maintain the domestic licensure of Direct General Insurance and Direct General Life.

All documents submitted in the Applications, at the Hearing and in response to requests of the Department which have been marked "Trade Secret: Confidential and Exempt" shall be provided confidential treatment pursuant to S.C. Code Ann. §§ 38-21-290 and 30-4-40.

IT IS SO ORDERED.



Charles W. Perry
Deputy Director for Financial Service

Columbia, South Carolina
March 27, 2007